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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,621	03/05/2002	Allan S. Frieze	3704-117.1.1.1 US	9170

7590

10/18/2006

Irving M. Fishman  
89 Headquarters Plaza  
Suite 1422, North Tower  
Morristown, NJ 07960

EXAMINER
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JASTRZAB, KRISANNE MARIE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/070,621

Applicant(s)

FRIEZE ET AL.

Examiner

Krisanne Jastrzab

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-23, 27-36, 39-42, 55, 64, 73 and 74 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-23, 27-36, 39-42, 55, 64, 73 and 74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 21-23, 27-36, 39-42, 55, 64 and 73-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deeds U.S. patent No. 5,524,755 in view of Miller U.S. patent No. 5,384,103, Feldman et al., U.S. patent No. 5,658,529, the Military Specification Anodic Coatings for Aluminum and Aluminum Alloys, MIL-A-8625F, and Applicant's Admission of the State of the Prior art.

Deeds teaches substantially the sterilization container as claimed, namely a container having a top and bottom means each having a set of vent holes covered by filter and filter retaining means, the sets of vent holes being offset from each other. The top and bottom are separated from each other by a silicone gasket when interconnected, which intrinsically functions to electrically insulate the two means. See the figures and column 2, lines 20-50.

Miller et al., teach that it is known and expected to construct sterilization container components from anodized aluminum, wherein the container is formed from two, vented, mating halves, and having stackable feet means provided thereon. The container is also provided with tray means therein for receiving articles to be sterilized and both the tray and container are provided with handles to accommodate user manipulation thereof. See column 2, lines 30-55, column 4, lines 1-45 and column 5, lines 58-60.

Feldman et al., teach the known and expected process of subjecting anodized aluminum medical instruments to gas plasma for sterilization thereof, as well as a process for applying the anodized coating such that it is not affected detrimentally by a hydrogen peroxide plasma treatment. See column 1, lines 24-32 and lines 45-51.

It would have been obvious to one of ordinary skill in the art to form the container means of Deeds from anodized aluminum as recognized as conventional by Miller and in a form as in Feldman et al., because it would be resilient even under the environment of plasma sterilization, which is recognized for being a highly reliable sterilization process.

MIL-A-8625F teaches the standard specification for anodized coatings on aluminum, including 6061, which teaches effective standard thickness ranges from 0.02 mils to 4.5 mils depending on the application type. It further teaches that coating thicknesses can be controlled to extremely close tolerances. See page 1, and page 17, particularly Tables IV and V.

Applicant's own admission of the state of the prior art at page 9, lines 6-7 of the instant specification, states that normally allowed specifications for coating thicknesses are up to 0.7 mils.

It is noted that Miller and Feldman et al., are silent as to the thickness of the anodized coating, however, they clearly disclose that the coatings are thin and MIL-A-8625F clearly teaches that standard specifications of anodized aluminum coatings, including for the preferred aluminum of the instant claims, are inclusive of the instantly claimed range of thicknesses and Applicant's own admission supports the

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conventionality of a range inclusive of that claimed. As such, one of ordinary skill in the art clearly would have chosen a conventionally recognized coating thickness and it would have required only routine experimentation to determine those thicknesses optimal for effectiveness in the sterilizing environment without interfering therewith.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-23, 27-36, 39-42, 55, 64 and 73-74 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,589,477 B1 in view of Feldman and MIL-A-8625F. 6,589,477 claims substantially the invention as presently claimed without, however, reciting the specific thickness of the anodized coating of the aluminum. Feldman clearly teaches anodized coatings formed to withstand plasma sterilization parameters, and MIL-A-8625F teaches conventionally recognized thicknesses of such coatings as falling well within the range claimed by applicant. As such, one of ordinary skill in the art clearly would have chosen a conventionally recognized coating thickness and it would

have required only routine experimentation to determine those thicknesses optimal for effectiveness in the sterilizing environment without interfering therewith.

Claims 21-23, 27-36, 39-42, 55, 64 and 73-74 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 200-285 of copending Application No. 10/295,758. 10/295,758 claims substantially the invention as presently claimed with only minor language differences there between.

This is a provisional obviousness-type double patenting rejection.

### ***Response to Arguments***

Applicant's arguments filed 8/4/2006 have been fully considered but they are not persuasive. Applicant has continued to argue the criticality of the anodized aluminum layer and that the thickness of it provides unexpected results in sterilization, however, the Examiner would continue to maintain that thicknesses within the range claimed by the Applicant are conventional and well recognized in the art.

Applicant further argues that the Military specification document teaches a range well exceeding that claimed by Applicant, with no guidance to lead one of ordinary skill in the art to choose Applicant's claimed range, however, the Examiner would disagree and point out that the tables in the Military specification clearly teach the use of the specific type of aluminum preferentially claimed by Applicant and recite an effective anodized layer with 0.02 mil to 0.7 mils for that aluminum, which closely encompasses

the range claimed by Applicant. The data provided in the declaration accompanying this response is not sufficient to overcome the rejection of record because the determinations found required only routine experimentation to optimize those ranges well recognized in the art as effective layer thicknesses.

***Conclusion***

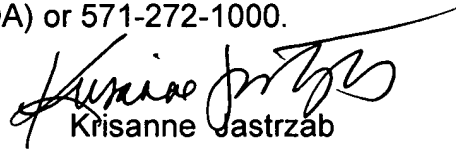
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Thurs. 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Krisanne Jastrab  
Primary Examiner  
Art Unit 1744

October 16, 2006